

DATED *22<sup>ND</sup> APRIL* 1993

TEMA NOMINEES PTY LTD *A.C.N. 008867847*  
("PRINCIPAL EMPLOYER AND TRUSTEE")

AND

PETER DANIEL GAVAN GEORGE  
("Member")

THE PETER GEORGE SUPERANNUATION FUND  
TRUST DEED

THE PETER GEORGE SUPERANNUATION FUND STAMP DUTY  
TRUST DEED 22/04/93 12878205 SD \$\*\*\*\*\*5.00

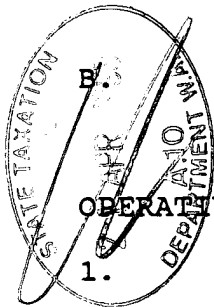
THIS DEED is made on 22<sup>ND</sup> APRIL 1993

BETWEEN: TEMMA NOMINEES PTY LTD of 230 ROKEBY ROAD,  
SUBIACO, WESTERN AUSTRALIA ("PRINCIPLE EMPLOYER  
AND TRUSTEE") A.C.N. 008267847

AND: PETER DANIEL GAVAN GEORGE of 43 ALEXANDER  
STREET, WEMBLEY, WESTERN AUSTRALIA ("MEMBER").

RECITALS:

A. The Trustee has resolved to establish an indefinitely continuing superannuation plan ("Fund") to provide retirement and other benefits for Members.



B. The Trustee proposes to act as the first Trustee of the Fund.

OPERATIVE PROVISIONS:

1. The Fund is to be known as the PETER GEORGE SUPERANNUATION FUND.

This deed includes the rules ("Rules") attached to it.

3. The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.

4. This deed may be amended in the manner set out in the Rules.

5. The Members are the first members of the Fund and agree to the Trustee acting as the first Trustee.

EXECUTED as a deed

The Common Seal of Temma Nominees Pty Ltd was hereto affixed in the presence of the Directors, in its capacity as Trustee and Principle employer.

EXECUTES:

*P George*  
.....  
P GEORGE  
DIRECTOR/SECRETARY



*J Martin*  
.....  
J MARTIN  
DIRECTOR

SIGNED BY PETER DANIEL GAVAN GEORGE  
in his capacity as member in the  
presence of:

*M Cheshire*  
.....  
Signature of witness

*Michelle Cheshire*  
.....  
Name of witness

*.15. Munja Way... Nallamara*  
.....  
Address of witness

*Promotions Officer*  
.....  
Occupation of witness

*P George*  
.....  
Signature of PETER DANIEL GAVAN GEORGE

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## RULES

### DEFINITIONS AND INTERPRETATION

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#### Definitions

1.1 Unless the contrary intention appears:

"**Accumulated Credit**" means the total balances of the Contribution Accounts of a Member.

"**Award**" means a prescribed agreement or award as defined in the Occupational Superannuation Standards Regulations or any other arrangement which the Employer and the Trustee agree should be treated as an Award.

"**Category**" in relation to a Member means the category of membership to which the Member is admitted or transferred.

"**Child**" includes an adopted child, a step-child or an ex-nuptial child.

"**Commencement Date**" means the date of establishment of the Fund.

"**Compulsory Contribution Account**" means the account kept for a Member under rule 9.6(b).

"**Compulsory Contributions**" means:

- (a) contributions the Employer or any other employer makes for a Member to the Fund under an Award; and
- (b) contributions the Employer or any other employer makes for a Member for the purpose of avoiding any Superannuation Guarantee Charge.

"**Contribution Account**" means a Compulsory Contribution Account, Employer Contribution Account or Member Contribution Account.

"**Death Benefit**" means a benefit payable under rule 6.4



"Deed" means the deed to which these Rules are attached.

"Dependant" of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person whom the Trustee believes is, or was at the date of death, dependent on the Member.

"Distribution Date" means a date determined by the Trustee under rule 9.9 for the declaration of a Fund Earning Rate.

"Distribution Period" means a period commencing on the Commencement Date or the day after a Distribution Date and ending on the next Distribution Date.

"Employee" means:

- (a) a full-time or part-time permanent employee of an Employer;
- (b) if the Employer is a company - a director of the company;
- (c) any other person nominated by an Employer.

"Employer" means the Principal Employer or any Participating Employer and in relation to any particular Member the Employer by which that Member is employed or nominated.

"Employer Contribution Account" means the account kept for a Member under rule 9.6(c).

"Employer Representative" means a member of the Management Committee appointed under rule 12.2(a).

"Financial Year" means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

"Forgone Benefits Account" means the account kept under rule 9.17.

"Fund" means the entire superannuation fund as constituted by the Deed and the Rules.

"Fund Earning Rate" means a rate declared under rule 9.10.

"Fund Secretary" means a person appointed under rule 11.9.

"Gainful Employment" in relation to a person means that the person is employed or engaged in any activity for earnings including business income, bonuses, commission, fees, gratuities, salary or wages.

"Gainfully Employed Person" means a person engaged in any Gainful Employment.

"Investment Fluctuation Reserve" means an account maintained under rule 9.15.

"Investment Portfolio" means a separate part of the Fund maintained under rule 9.19.

"Management Committee" means a committee appointed under rule 12.

"Member" means a person who has been admitted to membership under rule 4.3 and has not ceased to be a Member under rule 4.12.

"Member Contribution Account" means the account kept for a Member under rule 9.6(a).

"Member Representative" means a member of the Management Committee appointed under rule 12.2(b).

"Normal Retirement Date" means the day on which a Member reaches the age of 55.

"Participating Employer" means an employer which is admitted to the Fund under rule 3.1 and whose participation in the Fund has not been terminated under rule 3.2.

"Principal Employer" means the Principal Employer for the time being under rule 2.

"Reasonable Benefit Limits" means the limits imposed by the Commonwealth Government or a Responsible Authority on the amount of retirement benefits which are subject to concessional taxation treatment, and includes any announced proposals to alter those limits which the Trustee believes will have retrospective effect.

"Relevant Requirements" means any requirements imposed under the Occupational Superannuation Standards Act or any other law, or by a Responsible Authority, which must be satisfied for the Fund to qualify for the most favourable taxation treatment available to superannuation funds. It includes any proposed requirements which the Trustee believes will have retrospective effect.

"Representative" means an Employer Representative or a Member Representative.

"Required Payment Date" means any date at which a Member's benefit must be paid or commence to be paid to satisfy the Relevant Requirements.

"Responsible Authority" means the Insurance and Superannuation Commissioner or any other governmental authority responsible for administering the laws or any other rules governing the availability of income tax concessions to superannuation funds.

"Salary" means a Member's annual rate of ordinary salary or wages for services performed for the Employer, and includes director's fees but excludes commissions, payment for overtime and other special payments. However, the Principal Employer may establish some other basis for determining the Salary of a Member.

"Service" means the most recent continuous service of a Member as an Employee and includes:

- (a) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the

Employer or any insurance scheme sponsored by the Employer; and

- (b) any other period declared by the Employer to be Service.

**"Spouse"** includes a person who, although not legally married to a Member, lives with the Member on a bona fide domestic basis as the husband or wife of the Member.

**"Superannuation Guarantee Charge"** means a charge or tax imposed on employers for not making certain superannuation contributions.

**"Total and Permanent Disablement"** means incapacitation, certified by 2 registered medical practitioners approved by the Trustee, to an extent that a Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education, training or experience.

**"Trustee"** means the trustee of the Fund.

## Interpretation

### 1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) "amend" includes delete or replace;
- (f) "including" when introducing a list of items does not exclude a reference to other items of the same class;

- (g) "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (h) "tax" includes any duty or governmental impost.

**PRINCIPAL EMPLOYER 2.**

- 2.1 The first Principal Employer is the Trustee.
- 2.2 The Principal Employer may appoint another person to replace it as Principal Employer if that person agrees to be bound by the Rules.
- 2.3 If an order is made or an effective resolution is passed for the winding up of the Principal Employer, another person may take its place by written agreement with the Trustee.

**PARTICIPATING EMPLOYERS 3**

**Admission**

- 3.1 The Trustee must admit any employer as a Participating Employer if:
  - (a) the Principal Employer approves; and
  - (b) the employer agrees in a manner approved by the Trustee to be bound by the Rules.

**Termination**

- 3.2 The participation of a Participating Employer terminates if:
  - (a) the Employer gives written notice to the Trustee; or
  - (b) the Principal Employer gives written notice to the Employer; or
  - (c) the Employer ceases to have any Employees who are Members.

The termination must take place on a date specified by the Trustee.

- 3.3 On termination:
  - (a) the Employer and its Employees who are Members must immediately pay any arrears of contributions up to

the termination date but must make no further contributions;

- (b) the Trustee must continue to pay out of the Fund benefits which have become payable on or before the termination date;
- (c) the Trustee may transfer the amount representing the total Accumulated Credits of the Employer's Employees, together with any share which the Principal Employer directs of the Forgone Benefits Account or of any reserves, to:
  - (i) a fund nominated by the Employer; or
  - (ii) if the Employer does not nominate a fund within 90 days after the termination date, a fund selected by the Trustee,

in a manner consistent with the Relevant Requirements.

## **ELIGIBILITY AND MEMBERSHIP**

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### **Eligibility**

4.1

An Employee is eligible to become a Member if:

- (a) the Employer invites the Employee and the Employee applies within the time specified in the invitation; or
- (b) the Employer directs the Trustee to admit the Employee without an application.

The Employee may be admitted as a Member in Category A or B as specified in the invitation or direction, or if no Category is specified, then in Category A.

4.2

A Gainfully Employed Person (other than an Employee) is eligible to become a Member if:

- (a) the Trustee invites the person; and
- (b) the person applies within the time specified in the invitation.

The person may be admitted as a Member in Category C

## Membership

- 4.3 Before admitting any person as a Member, the Trustee may require the person:
- (a) to have a medical examination; and
  - (b) to provide information which the Trustee considers relevant to the administration of the Fund.

- 4.4 A person becomes a Member in the Category determined under rule 4.1 or 4.2:

- (a) on the date when the Trustee has approved the person's application or any earlier date agreed by the Trustee, the Employer (except in relation to a Category C Member) and the Member; or
- (b) on the date directed by the Employer under rule 4.1(b), or any earlier date specified in the direction.

- 4.5 The Trustee may:

- (a) reject an application or direction; or
- (b) impose special conditions when accepting an application or direction.

- 4.6 Each Member agrees to be bound by the Rules.

- 4.7 The Trustee may alter a Member's Category if the Member requests the alteration in writing and the Employer consents. However, the alteration must not:

- (a) increase the Member's obligation to contribute; or
- (b) reduce the Member's accrued benefit, unless the Member gives written consent. The Trustee must advise the Member in writing of the alteration.

## Transfer from another fund

- 4.8 If the Principal Employer consents, the Trustee may make arrangements it considers appropriate with:

- (a) a Member; or

- (b) any previous employer of the Member; or
- (c) the trustees of any superannuation fund of which the Member has been a member,

to transfer assets to the Fund and to provide benefits in respect of the Member, which may be calculated in a different manner than set out in the Rules. The arrangement must be consistent with the Relevant Requirements.

**Transfer to another fund**

4.9 If a Member in Service becomes eligible to join another superannuation fund and requests the Trustee to transfer assets to the other fund, the Trustee may do so. However:

- (a) the Trustee must not act without the Employer's consent; and
- (b) the transfer must be consistent with the Relevant Requirements; and
- (c) the Trustee must not transfer more than the Member's Accumulated Credit or more than is requested by the Member.

4.10 The transfer satisfies the Member's entitlement to any benefit in respect of the amount transferred and the Trustee may declare that it satisfies the Member's entitlement in full. The Trustee is not responsible for the manner in which the trustee of the other fund deals with the amount transferred.

**Temporary withdrawals and unpaid leave**

4.11 If a Member:

- (a) leaves Service or ceases to be Gainfully Employed and the Trustee believes the Member is likely to return to Service or resume Gainful Employment within a reasonable period; or

- (b) takes unpaid leave,

the Trustee may make arrangements it considers appropriate concerning contributions and benefits for the Member for the period of absence.



**Transfer of Service** 4.12 The transfer of a Member from Service with one Employer to Service with another Employer is not a termination of Service unless the Principal Employer declares it to be.

**Cessation of membership** 4.13 A person ceases to be a Member when:

- (a) all benefits which are or may be payable in respect of the Member have been paid; or
- (b) a transfer is made under rule 3.3 or 4.8 in satisfaction of all the Member's entitlement to benefits; or
- (c) all the Member's entitlement to benefits is terminated.

**Change of Status** 4.14 If a Member ceases to be an Employee but continues to be Gainfully Employed the Member is entitled to receive any benefits which are payable to the Member under these rules but may elect that some or all of the benefits be retained in the Fund and that the Member continue to contribute to the Fund as a Member in a Category agreed by the Member and the Trustee.

**CONTRIBUTIONS** 5

**Member contributions** 5.1 A Member may contribute to the Fund at a rate determined by the Member from time to time and approved by the Trustee.

5.2 Where a Member is an Employee, unless the Member and the Employer agree otherwise, the Employer may deduct the Member's contributions from the Member's remuneration. The Employer must pay the contributions to the Trustee in the manner and at the times agreed between the Employer and the Trustee.

**Employer contributions**

5.3 Where a Member is an Employee, the Employer may contribute to the Fund in respect of a Member at the rate determined by the Employer from time to time and approved by the Trustee.

5.4 An Employer may cease, suspend or reduce its contributions in respect of any Member by written notice to the Trustee. The Trustee must notify the Member and the Member may cease contributions.

**Other contributions**

5.5 If the Member is employed by a person who is not an Employer, the Trustee may accept contributions in relation to that Member from that employer.

**Contributions - General**

5.6 The Trustee may refuse to accept all or part of a contribution from a person without giving any reason.

5.7 The Trustee may accept contributions by accepting the transfer of assets to the Fund. The Trustee and the Member must agree the value of any contributions made by transfer of assets.

5.8 The Trustee must not accept contributions contrary to the Relevant Requirements.

5.9 If the Trustee finds that any contributions have been accepted contrary to the Relevant Requirements, the Trustee must repay them to the contributor, less any charge which the Trustee may make for any insurance effected or other expenses incurred in relation to the contributions.

5.10 If an Employer makes contributions to the Fund for a Member in relation to a contribution period and:

(a) the contributions are intended to:

(i) satisfy the Employer's obligations under any Award in relation to the period; or

(ii) avoid a liability for the Superannuation Guarantee Charge in relation to the period; and

- (b) the contributions do not satisfy the Award or avoid the Superannuation Guarantee Charge in relation to the period; and
- (c) the contributions have been credited to any Contribution Account of the Member,

then the Employer may direct that the contributions be transferred from the Contribution Accounts of the Member to the Forgone Benefits Account.

5.11 The Trustee must follow the Employer's direction if:

- (a) it is satisfied that the circumstances described in rule 5.10(a), (b) and (c) exist; and
- (b) to do so is permitted by the Relevant Requirements.

5.12 If the Employer is required to make contributions to the Fund for a Member in relation to a contribution period under rule 5.3, but has not yet made them, and the Employer becomes bound to:

- (a) make contributions under an Award to another fund for the Member in relation to the period; or
- (b) pay the Superannuation Guarantee Charge for the Member in relation to the period,

then the Employer's liability to contribute under rule 5.3 is reduced to the extent that the Employer must make the Award contributions or pay the Superannuation Guarantee Charge.

**BENEFIT  
ENTITLEMENT**

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**Retirement**

6.1 A Member who leaves Service or ceases to be Gainfully Employed at or after the Normal Retirement Date is entitled to a benefit equal to the Accumulated Credit.

6.2 A Member who:

(a) is in Service or Gainfully Employed on or after the Normal Retirement Date; and

(b) requests payment

is entitled to a benefit equal to the Accumulated Credit.

**Total and Permanent Disablement**

6.3 A Member who leaves Service or ceases to be Gainfully Employed because of Total and Permanent Disablement is entitled to a benefit equal to the Accumulated Credit.

**Death**

6.4 On the death of a Member in Service or while Gainfully Employed the Trustee must pay a benefit equal to the Accumulated Credit.

**Other termination of Service**

6.5 A Member who leaves Service or ceases to be Gainfully Employed in circumstances other than those described in rules 6.1, 6.3 and 6.4 is entitled to a benefit equal to the Accumulated Credit.

**Voluntary deferral**

6.6 A Member who is entitled to a benefit may ask the Trustee to defer payment of all or part of it. The Trustee may, but need not, comply with the request if the Relevant Requirements permit.

**Compulsory preservation**

6.7 The Trustee must preserve benefits of an amount equal to the proportion of the Member's Employer Contribution Account nominated by the Employer from time to time.

6.8 The Trustee must preserve any further part of a benefit if required by the Relevant Requirements.

6.9 Where any amount is required to be preserved the Trustee must:

(a) pay that part of the benefit under rule 8.3 or 8.4 to a fund or organisation nominated by the Member which also preserves it under the Relevant Requirements; or

(b) pay it to a fund or organisation nominated by the Trustee if the Member does not make a request and the Relevant Requirements permit; or

(c) retain it in the Fund until it may be paid under the Relevant Requirements.

**Consequences of retention**

6.10 Any part of a benefit retained under rule 6.6 or 6.9 remains credited to the appropriate Contribution Account until payment and the Trustee must adjust the amount of the benefit on the basis of further credits and debits recorded in the Account. If the Member dies before the benefit is paid in full then the Trustee must pay the remainder of the benefit as a Death Benefit.

**Required Payment Date**

6.11 If a Member remains in Service or Gainful Employment but reaches the Required Payment Date, the Trustee must pay the Member the Accumulated Credit or apply it to purchase an annuity under rule 8.1.

**Determination of entitlement**

6.12 A benefit is only payable if the Rules permit it.

6.13 The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions.

**Interest**

6.14 The Trustee may credit or debit interest at a rate it considers appropriate to a benefit which is paid within 1 month after the date it becomes payable. However, the Trustee is not required to do so.

6.15 The Trustee must credit or debit interest at the Fund Earning Rate to a benefit which is not paid within 1 month after the date it becomes payable.

**RESTRICTIONS ON BENEFIT ENTITLEMENT**

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**Reduction of benefit for Member's debt or wrongdoing**

7.1 At the time a benefit becomes payable or available for transfer, the Trustee may reduce it by:

(a) any amount actually or contingently owed by the Member to an Employer or to the Trustee; and

- (b) any loss incurred by an Employer because of the Member's misconduct, dishonesty, or gross negligence; and
- (c) any costs incurred by an Employer or the Trustee in attempting to recover an amount or loss in (a) or (b).

However, a benefit may only be reduced as the Relevant Requirements permit.

7.2 The Trustee may:

- (a) rely upon a written statement from an Employer as evidence of the amount and cause of any debt, loss or cost; and
- (b) reimburse the Employer from the amount by which the Member's benefit is reduced.

**Forfeiture on assignment, insolvency or incompetence**

7.3 A Member forfeits a benefit if:

- (a) the Member has purported to assign, alienate or charge all or part of it; or
- (b) the Member is bankrupt.

However, a benefit may only be forfeited as the Relevant Requirements permit.

7.4 The Trustee must apply the benefit for one or more of the Member and the Member's Dependants as the Trustee considers appropriate and the Relevant Requirements permit.

**Unclaimed benefits**

7.5 If the Trustee cannot locate the person entitled to a benefit after making all enquiries which the Trustee considers appropriate, then the Trustee may treat the benefit as forfeited and transfer it to the Forgone Benefits Account. However, the Trustee may only deal with a benefit as the Relevant Requirements permit.

**Prevention of excessive benefits**

7.6 The Trustee must not pay a benefit if the payment results in the Trustee or an Employer contravening any law relating to corporations.

7.7 To the extent that the payment of a benefit would result in the total amount of benefits a Member receives from the Fund or from any other relevant source exceeding the Reasonable Benefit Limits, the Trustee may only pay it if:

- (a) the Principal Employer consents; and
- (b) the Trustee is satisfied that the payment is consistent with the Relevant Requirements.

7.8 If the Trustee believes that a Member's benefit is or will be excessive, the Trustee may:

- (a) reduce the contributions payable in respect of the Member; or
  - (b) transfer an amount from a Contribution Account of the Member to the Forgone Benefits Account if the Relevant Requirements permit; or
  - (c) apply a combination of (a) and (b),
- as it considers appropriate.

**Social security, compulsory superannuation and national compensation**

7.9 The Principal Employer may direct the Trustee to make any changes to contributions or benefits if:

- (a) an Employer is required by law to make payments to, or provisions for:
  - (i) any scheme of national or social security for the benefit of Employees; or
  - (ii) any superannuation scheme (including the Fund); or
  - (iii) any scheme of compensation to provide a continuation of part or all of the earnings of Employees on disablement from accident, injury, illness, or the like; or
- (b) the means test under the Social Security Act 1947 as at the Commencement Date for the receipt of any age pension is relaxed or totally or partly removed.

This power is in addition to the Principal Employer's other rights and powers.

7.10 No change may be made under rule 7.9:

- (a) contrary to any statute, award or industrial agreement; or
- (b) reducing a benefit that has accrued or become payable for a Member, without the written consent of the Member or the Responsible Authority.

7.11 The Trustee must notify the Members and the Employers of the effect of any change made under rule 7.9.

## **PAYMENT OF BENEFITS**

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### **Lump sum payment**

8.1 Subject to rules 8.2 to 8.5 a benefit must be paid as a lump sum.

### **Pension**

8.2 If a Member entitled to a benefit asks the Trustee to pay all or part of it as a pension, subject to the Relevant Requirements, the Trustee:

- (a) must comply with the request;
- (b) may from time to time determine the annual amount of the pension and amount and frequency of instalments;
- (c) must, at the request of the Member, commute all or part of the benefit on a basis determined by the Trustee.

### **Purchase of annuity**

8.3 If a Member entitled to a benefit asks the Trustee to apply all or part of it to purchase an annuity in the name of the Member, or of the Member and one or more Dependants, and the purchase complies with the Relevant Requirements, then the Trustee must comply with the request.

### **Payment to another fund**

8.4 If a person entitled to a benefit asks the Trustee to pay all or part of it to another fund, and the payment complies with the Relevant Requirements, the Trustee must comply with the request.



**Payment of Death Benefits**

8.5 The Trustee must pay a Member's Death Benefit to one or more of the Member's:

(a) Dependants; and

(b) legal personal representative,

in proportions which the Trustee decides. The Trustee may pay each benefit as a lump sum, pension or annuity, or in any other form, as the Trustee considers appropriate.

**Preferred beneficiary**

8.6 A Member may give the Trustee a notice indicating how the Member would prefer the Member's Death Benefit to be distributed among the Member's Dependants and legal personal representative. The Member may give a new notice at any time. A notice given under this rule is given for information only and does not limit the Trustee's discretion on the distribution of the Death Benefit.

**Distribution of specific assets**

8.7 The Trustee may pay any benefit by transferring assets of equivalent value to the person or the person's nominee.

**Trustee's discharge**

8.8 The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

**Payment for person incapable of management**

8.9 If the Trustee believes that a person who is entitled to a benefit is unable to manage financial affairs, and the Relevant Requirements permit, the Trustee may:

(a) pay the benefit to another person to be used for the advantage of the person entitled to it; and

(b) accept the other person's receipt as a good discharge.

The Trustee is not responsible for the application of the benefit by the person to whom it is paid.

- Tax** 8.10 The Trustee may deduct from a payment from the Fund any amount which it is required to deduct for tax.
- RECORDS AND ACCOUNTS** 9
- Records** 9.1 The Trustee must keep records for the Fund of:
- (a) Members;
  - (b) assets and liabilities;
  - (c) income and expenditure;
  - (d) all other matters specified by the Relevant Requirements,
- and retain them for the period specified by the Relevant Requirements.
- Accounts and audit** 9.2 The Trustee must appoint an auditor who meets the Relevant Requirements.
- 9.3 For each Financial Year the Trustee must prepare an income and expenditure account and a statement of net assets of the Fund.
- 9.4 The Trustee must ensure that, for each Financial Year, the auditor:
- (a) audits the accounts and records of the Fund; and
  - (b) reports in writing to the Trustee,
- within the time specified by the Relevant Requirements.
- 9.5 The Trustee must give to the Principal Employer a copy of each income and expenditure account, statement of net assets, and auditor's report.
- Contribution Accounts** 9.6 The Trustee must record for each Member:
- (a) in a Member Contribution Account - Member contributions, Employer contributions which the Employer directs the Trustee to credit to this account and contributions received from any employer which is not a Participating Employer; and
  - (b) in a Compulsory Contribution Account - Compulsory Contributions

made by the Employer for the Member; and

- (c) in an Employer Contribution Account - all other Employer contributions and contributions made by other employers for the Member.

9.7 The Trustee must also record in each Contribution Account:

- (a) amounts transferred from other funds which the Trustee decides to credit to the account;
- (b) life insurance premiums which the Trustee decides to debit to the account;
- (c) proceeds of life insurance policies to the extent that they were funded by premiums debited to the account;
- (d) amounts debited to the account for tax or other expenses;
- (e) amounts credited or debited to the account for earnings or losses of the Fund;
- (f) amounts paid as benefits or transferred to other funds from the account;
- (g) amounts transferred to or from the Forgone Benefits Account.

**Tax and expenses**

9.8 The Trustee may debit to Contribution Accounts:

- (a) tax incurred by the Trustee; and
- (b) expenses of the Fund; and
- (c) provisions for (a) and (b),  
in proportions which the Trustee considers fair and which are consistent with the Relevant Requirements.

**Distribution Date**

9.9 The Trustee must declare a Distribution Date at least once in each Financial Year.

**Fund Earning Rate**

9.10 The Trustee must declare:

- (a) as soon as practicable after a Distribution Period ends, a Fund Earning Rate to be applied as at the

Distribution Date to Contribution Accounts that remain at the date of declaration; and

- (b) whenever it considers appropriate, an interim Fund Earning Rate to be applied to the Contribution Accounts of a Member as at the date when a benefit or transfer becomes payable from them,

for the period since the last date as at which a distribution was made to those Contribution Accounts.

9.11 The Trustee must decide whether a Fund Earning Rate is to be applied to Contribution Accounts:

- (a) on daily balances; or
- (b) on average balances; or
- (c) on some other basis.

9.12 In determining a Fund Earning Rate the Trustee must comply with the Relevant Requirements and take into account:

- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
- (b) the realised and unrealised losses and expenses of the Fund, including any tax that is or may be incurred by the Trustee which is not debited to a Contribution Account;
- (c) the appropriateness of averaging earnings, losses and expenses over several Distribution Periods.

9.13 A Fund Earning Rate may be positive or negative.

9.14 The Trustee must distribute earnings or losses to Contribution Accounts at the Fund Earning Rate which applies to them.

**Investment  
Fluctuation Reserve**

9.15 The Trustee must set up a reserve account called the Investment Fluctuation Reserve to handle any differences between the actual earnings or losses of the Fund and the total amount distributed to Contribution Accounts for a Distribution Period.

**Forgone Benefits Account**

- 9.16 The Trustee must not declare a Fund Earning Rate for a Distribution Period that would take the Investment Fluctuation Reserve into debit.
- 9.17 The Trustee must keep a Forgone Benefits Account to hold any part of a Member's Accumulated Credit no longer required to pay benefits for the Member.
- 9.18 The Trustee must apply amounts held in the Forgone Benefits Account for one or more of the following purposes:
- (a) replacement of contributions otherwise payable by any Employer or Member;
  - (b) additional benefits for Members;
  - (c) payment to an Employer;
  - (d) other purposes which the Trustee determines.

However, the Trustee may only apply amounts as approved by the Principal Employer and permitted by the Relevant Requirements, and must apply all amounts within the time limit imposed by the Relevant Requirements.

**Investment Portfolios**

- 9.19 The Trustee may maintain the Fund in separate parts. For any Investment Portfolio the Trustee must:
- (a) select the assets which comprise it; and
  - (b) apply rules 9.10 to 9.16 separately to the Investment Portfolio and the Contribution Accounts it represents.
- 9.20 The Trustee may transfer assets between different Investment Portfolios.
- 9.21 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Investment Portfolios.
- 9.22 The Trustee may make rules on when and how Members may give directions to apply:
- (a) future contributions; or

**ASSETS,  
INVESTMENTS,  
BORROWINGS**

**Assets and  
investments**

(b) existing balances in Contribution  
Accounts

to Investment Portfolios.

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10.1 The assets of the Fund consist of:

(a) money or other assets received or  
receivable by the Trustee for the  
purposes of the Fund; and

(b) investments made by the Trustee  
and all income on those investments.

10.2 The Trustee holds the assets of Fund on  
trust to apply them in the manner set out  
in the Rules.

10.3 The Trustee may invest all money which  
is not required to meet current payments  
in any manner in which it could invest if  
it were personally entitled to the money,  
including:

(a) in investments authorised by the law  
relating to investment of trust  
funds;

(b) in policies of life insurance;

(c) in trusts or common funds;

(d) on deposit or loan, with or without  
security;

(e) in real property;

(f) in shares, stocks, notes, options,  
debentures or other securities;

(g) in options, hedging contracts,  
futures contracts and other  
financial instruments.

10.4 The Trustee may:

(a) mix investments with investments of  
other people or trusts; and

(b) vary, replace, encumber and deal  
with the investments, as if it were  
dealing with its own property.

## Borrowing

- 10.5 The Trustee must invest in a manner which is consistent with the Relevant Requirements.
- 10.6 The Trustee may only make a loan to a Member if that is consistent with the Relevant Requirements.
- 10.7 The Trustee may appoint nominees to hold investments.
- 10.8 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit. The Trustee may only do so as permitted by the Relevant Requirements.

## TRUSTEE

### Nature, appointment and removal

11

- 11.1 The Trustee must be one or more individuals or a sole body corporate.
- 11.2 The Trustee ceases to be the Trustee when:
  - (a) the Principal Employer serves written notice to that effect on the Trustee; or
  - (b) the Trustee serves written notice to that effect on the Principal Employer; or
  - (c) a receiver or liquidator of the Trustee is appointed; or
  - (d) an order is made, or a resolution passed, for the Trustee to be wound up; or
  - (e) the Relevant Requirements so require.

11.3 The Principal Employer may appoint itself or any other body corporate as the new Trustee. The appointment must be made in writing.

11.4 The appointment of a Trustee must be consistent with the Relevant Requirements.

11.5 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

11.6 A vacancy on the board of directors of the Trustee must be filled within any

### Vacancy on board

time stipulated in the Relevant Requirements.

### Trustee's powers

11.7 The Trustee may do anything it considers appropriate to administer the Fund and comply with the Relevant Requirements, including:

- (a) giving receipts and discharges;
- (b) conducting and settling legal proceedings;
- (c) referring claims to arbitration;
- (d) giving any guarantee or indemnity;
- (e) insuring any risks;
- (f) acting as an underwriter;
- (g) making rules for rounding off contributions and benefits;
- (h) providing for and transferring liability for any tax.

### Appointment of manager

11.8 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must be in writing on terms which the Trustee considers appropriate.

### Fund Secretary

11.9 The Trustee may appoint a Fund Secretary.

### Delegation

11.10 The Trustee may delegate any of its powers, duties and discretions to any person.

### Limitation of Trustee's liability

11.11 The Trustee is only liable for its acts or omissions which are dishonest or in wilful breach of trust.

11.12 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund unless it results from the Trustee's dishonesty or wilful breach of trust.

### Indemnity to Trustee

11.13 A Member or Employer must indemnify the Trustee for:

- (a) any liability incurred; or
- (b) any overpayment made; or



(c) any failure to provide for tax,  
as a result of the Trustee relying on  
information given to it by that Member or  
Employer.

11.14 Rules 11.11 - 11.13 also apply to:

- (a) any directors or employees of the Trustee or an Employer;
- (b) the Fund Secretary;
- (c) any other person nominated in writing by the Trustee;
- (d) any Representative;
- (e) a former Trustee or any person who previously fell within any of (a) to (d).

**Authorisations by Employer**

11.15 The Trustee may treat a written or oral authorisation given, or purported to be given, by a director of the Employer as a valid authorisation by the Employer.

**Authorisation by Members**

11.16 The Trustee may treat an authorisation purported to be given by a Member as given by the Member.

**Trustee's discretions**

11.17 The Trustee, any officer of the Trustee, and any member of the Management Committee may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise.

11.18 The Trustee and the Management Committee are completely unrestricted in the exercise of their powers and discretions.

**Remuneration of Trustee**

11.19 The Trustee may not receive any remuneration for its office from the Fund. However,

- (a) a Trustee who is a solicitor, accountant, actuary or other professional adviser, or any firm of which the Trustee is a member, may charge for professional services as if that person had not been a Trustee; and

- (b) an Employer may remunerate the Trustee from its own resources.

**MANAGEMENT COMMITTEE 12**

**Appointment of**

**Management Committee**

- 12.1 There must be a Management Committee unless the Relevant Requirements are satisfied in some other way.
- 12.2 The Management Committee must comprise:
  - (a) 2 or more Employer Representatives appointed in writing by the Principal Employer; and
  - (b) an equal number of Member Representatives appointed in writing by the Trustee.

The Principal Employer may only change the number of Employer Representatives at the time of a selection under rule 12.4.
- 12.3 The Member Representatives must be:
  - (a) appointed from the Members in Service; and
  - (b) selected by the Members on a basis determined by the Principal Employer which is consistent with the Relevant Requirements.
- 12.4 The Trustee must arrange selections of Member Representatives at 3 year intervals. The Trustee may arrange a selection at an earlier time if appropriate.
- 12.5 Each Member Representative holds office until:
  - (a) a new selection; or
  - (b) removal from office under rule 12.6.
- 12.6 A Representative ceases to hold office if the Representative:
  - (a) resigns by written notice to the Principal Employer;
  - (b) becomes a bankrupt or makes an assignment to or composition with creditors;

- (c) in the opinion of the Trustee becomes mentally ill or incapable of carrying out the responsibilities of a Representative;
- (d) dies;
- (e) being a Member Representative, ceases to be in Service or ceases to be a Member;
- (f) being a Member Representative, finishes a term of office;
- (g) fails to attend 3 consecutive meetings of the Management Committee without reasonable cause, and the other Representatives resolve to remove the Representative.

**Vacancies**

12.7 A vacancy on the Management Committee must be filled as soon as is reasonably practicable, but no later than 60 days after it occurs. The remaining Representatives may continue to act in the meantime.

**Powers of Management Committee**

12.8 The Management Committee may exercise or perform, or direct the Trustee on the exercise or performance of, all powers, duties and discretions conferred on the Trustee.

**Management Committee meetings**

12.9 A meeting of the Management Committee may be held if all Representatives have been given written or oral notice. Accidental failure to notify a Representative does not invalidate the meeting.

12.10 The Management Committee:

- (a) may regulate its meetings as it considers appropriate;
- (b) must appoint a chairman for each meeting;
- (c) may act on a resolution if two-thirds of all Representatives have voted for it at a meeting.

**Telephone meetings**

12.11 A meeting of the Management Committee may be held by telephone or other similar means if:

(a) all Representatives have been given written or oral notice of the meeting; and

(b) two thirds of the Representatives take part in the meeting and each is able to hear each of the others.

**Circulatory resolutions**

12.12 A resolution in writing signed by all Representatives is effective as if it had been passed at a meeting of the Management Committee, and may consist of several documents in the same form each signed by one or more Representatives.

**Minutes**

12.13 The Management Committee must keep minutes of its meetings. Minutes are evidence of the matters recorded if they are confirmed by the next meeting and signed by the chairman.

**Alternates**

12.14 The Principal Employer may appoint an alternate Representative for each Employer Representative.

12.15 The Trustee may appoint an alternate Representative for each Member Representative. Each alternate must be selected by the Members on a basis determined by the Principal Employer which is consistent with the Relevant Requirements.

12.16 An alternate may be removed from office by the person who appointed the alternate.

12.17 An alternate ceases to hold office if the Representative for whom the alternate was appointed ceases to hold office. However, the alternate may be appointed to replace the Representative.

12.18 Notice of meetings of the Management Committee must be given to alternates as if they were Representatives.

12.19 An alternate may attend and vote at a meeting if the Representative does not attend, and the alternate's vote counts as a vote of the Representative.

12.20 An alternate may sign a written resolution in place of the Representative.

ADMINISTRATION 13

Expenses of the Fund 13.1 All the expenses in connection with the Fund which are not paid by an Employer are payable from the Fund. The Trustee may reimburse an Employer for expenses in connection with the Fund.

Inspection of Deed and Rules

13.2 A Member may inspect a copy of the Deed and Rules at the Employer's office during the Employer's usual business hours.

Giving of information

13.3 Every Member, person claiming a benefit and Employer must give the Trustee any information or documents that the Trustee requires to administer the Fund.

13.4 The Trustee may require a Member to have a medical examination.

13.5 The Trustee must give each Member:

(a) as soon as practicable after the person becomes a Member;

(b) as soon as practicable (and no more than 6 months) after the end of each Financial Year;

(c) as soon as practicable after the person ceases to be a Member;

(d) any other occasion,

the information which must be given under the Relevant Requirements at that time.

13.6 The Trustee must give each Employer and the Responsible Authority on any occasion the information which must be given under the Relevant Requirements at that time.

Notices

13.7 Any notice or other written communication in connection with the Fund is given to a person if it is:

(a) handed to the person; or

(b) delivered to the person's last known address; or

(c) posted by ordinary post from within Australia to the person's last known address.

13.8 If the notice or communication is posted, it is taken to be received on the third business day after posting.

**Power of attorney**

13.9 Each Member irrevocably appoints the Trustee as the Member's attorney to do all things which the Trustee considers appropriate to administer the Fund.

**Other rights not affected**

13.10 The Rules:

- (a) do not affect the right of an Employer to dismiss an Employee;
- (b) may not be used in any proceedings against an Employer relating to a termination of employment;
- (c) do not affect any person's right to claim compensation for work-related injuries under any law.

**Employer's powers and discretions**

13.11 An Employer may exercise any power or discretion given to it under the Rules in its own interest. It is not under any fiduciary or other obligation to any person in exercising that power or discretion.

**Governing law**

13.12 The Fund and the Deed and Rules are governed by the law in force in Western Australia.

**TERMINATION OF THE FUND**

14

**When Fund is to be terminated**

14.1 The Trustee must give written notice to each Employer and Member that the Fund is to terminate if:

- (a) the Principal Employer directs it to do so; or
- (b) an order is made or an effective resolution is passed for the winding up of the Principal Employer, and the Trustee determines that no other person is likely to take the place of the Principal Employer; or
- (c) the Trustee determines that it is appropriate to terminate the Fund.

The notice must specify a termination date that is as soon as reasonably practicable after (a) or (b) occurs.

- Contributions** 14.2 Any contributions in arrears at the termination date must be paid immediately.
- 14.3 The Trustee must not accept any other contributions after the termination date.
- Final distribution** 14.4 The Trustee must treat the termination date as a Distribution Date.
- Application of Fund** 14.5 On termination, the Trustee must apply the Fund assets in the following order of priority:
- (a) to provide for all expenses and liabilities for which the Trustee is or may become liable;
  - (b) to provide in respect of each Member:
    - (i) any benefit which became payable before the termination date; or
    - (ii) if (i) does not apply - a benefit equal to the Accumulated Credit calculated as at the termination date;
  - (c) to increase any benefits as the Principal Employer may direct or, if rule 14.1(b) applies, as the Trustee may decide;
  - (d) to pay Employers in proportions determined by the Principal Employer or, if rule 14.1(b) applies, by the Trustee.
- Payment of benefits** 14.6 A Member may not receive a benefit under rule 14.5 before the Relevant Requirements permit.
- 14.7 If a Member dies before receiving a benefit provided under rule 14.5, the Trustee must pay it as if it were a Death Benefit.

## **AMENDMENT OF DEED AND RULES**

15

### **Power to amend**

- 15.1 The Trustee may amend any of the provisions of the Deed or Rules including this rule 15. The Trustee must not

do so without the Principal Employer's consent.

**Form of amendment** 15.2 An amendment must be made in writing or by resolution.

**Date of effect** 15.3 An amendment may take effect from a date before or after the time it is made.

**Limitation of power** 15.4 No amendment may reduce:

- (a) the amount of any benefit, calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued or become payable to a Member before the amendment; or
- (b) the amount of any other benefit that is or may become payable to a Member in relation to a period before the amendment,

unless the Member or the Responsible Authority consents in writing, or the reduction is permitted under the Relevant Requirements.

**Notification** 15.5 The Trustee must notify the Members of the nature, purpose and effect of any amendment in accordance with the Relevant Requirements. However, failure to notify does not invalidate the amendment.

**COMPLIANCE RULE** 16

16.1 All the standards which the Occupational Superannuation Standards Regulations in force on 28 August 1992 prescribe for superannuation funds form part of these Rules, whether or not they are explicitly stated in the Rules.

However, if a requirement of the standards ceases to be in force or the Responsible Authority does not require it to be complied with, then that requirement ceases to be included by this rule.

16.2 A requirement included by rule 16.1 prevails over any other rule which is inconsistent with it.